



MULTISTATE TAX COMMISSION

SALES TAX ON DIGITAL PRODUCTS WORK GROUP MEETING

NOVEMBER 6, 2025

STATUS – SOURCING DISCUSSION

- Discussed the Streamlined rules at prior meetings
- Discussed the multiple points of use (MPU) issue
- Looked at the Washington and Massachusetts approaches and also talked about Streamlined's work in this area
- Main points –
 - Important to determine what the rules apply to
 - Non-B2B purchases may be excluded
 - Refunds are a major means for implementing MPU
 - Other issues may not be fully addressed
- This information will be part of the white paper



EXCLUSIONS AND EXEMPTIONS

DIGITAL PRODUCTS PROJECT



Digital White Paper Issue Outline

NOTE: Information in this digital outline is in draft form and additional information will be added over time. There are no final recommendations at this time.

THE WHITE PAPER

→ Purpose

→ Imposition (definitions)

→ Issues of sale

→ Exemptions and Exclusions

→ Mixed and Bundled Products

→ Sourcing

→ Alternative Taxes

→ Federal Law

→ Other related issues

→ Appendix

Organization of the Digital Outline

The digital outline includes general topic areas or categories of issues and information as summarized below. You can access current information and resources on these topics using the buttons on the left.

General Topic Areas:

NOTE: Because some issues are closely related to each other, information may be included in more than one topic section of the digital outline. Also, included on each topic page are links to a summary of the history of state sales taxes and to other critical information.

- **Purpose** – Includes information on the purpose of the white paper and essential considerations impacting taxation of digital products including critical federal laws, state legislative studies, and stakeholder general issues and concerns.
- **Imposition** – Includes information on how states approach taxation of digital products currently—using a broad, medium, or narrow approach, and information on definitions.
- **Issues of Sale** – Includes information on the different types of transactions by which digital products may be provided to customers (i.e., sale, lease, license, subscription or limited access, etc.)
- **Exemptions and Exclusions** – Includes policy and administration related issues on exemptions and exclusions that might be applied to digital products.
- **Mixed and Bundled Products** – Includes information on the Streamlined bundling rules and from stakeholder interviews on this subject as well as the results of a bundling exercise study group.
- **Sourcing** – Includes information from the Streamlined sourcing rules as well as information on other sourcing issues including multiple points of use.
- **Alternative Taxes** – Includes information on taxes other than sales and use taxes that may be imposed on digital products.
- **Federal Law** – Includes information on relevant federal constitutional and statutory law.
- **Other Related Issues** – Includes direct pay rules and general enforcement issues.
- **Appendix** – Contains links to various resources for all topic areas.

Background on the Project

At the April 28, 2021 MTC Uniformity Committee meeting, the Washington Department of Revenue gave a presentation on their state's experience with including digital products in their sales tax base as well as the alternatives they considered. They proposed that the Committee take up a project to help states develop a simpler and more adaptable approach.

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→ Purpose	✓
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→ Sourcing	✓
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- Stakeholder Discussions
- Written Comments and Feedback
- State Tax Agency Information
- Resolutions
- Whitepaper Outline Drafts
 - [Draft of Detailed Outline of White Paper – August 2, 2022](#)
 - [Draft Detailed Outline of White Paper – September 1, 2022 \(Word Version\)](#)
 - [White Paper Outline as of October 17, 2022 \(Word Version\)](#)
 - [White Paper Outline for the December 8, 2022 Meeting](#)
 - [White Paper Outline for the January 5, 2023 Meeting \(Word Version\)](#)
 - [White Paper Outline as of February 2, 2023 \(Word Version\)](#)
- All Project Articles and Resources

THE WHITE PAPER OUTLINE



Discussion Draft of Detailed Outline of a White Paper on Sales Taxation of Digital Products

*Prepared by staff of the Multistate Tax Commission for discussion by the
Digital Work Group meeting, February 2, 2023)*

Introduction

In response to a proposal to prepare a white paper on how states might best adapt their sales tax to include digital products, the MTC Uniformity Committee asked staff to talk to stakeholders, review the relevant research, and identify issues to be included in a detailed outline of that paper. This report provides a first discussion draft of that detailed outline, which is a working document that will change as the project continues.

During 2021 and 2022, MTC staff conducted 43 separate interviews of individuals or groups representing particular taxpayers, states, or other organizations, as well as practitioners and academics. (See Appendix A). They surveyed other relevant research, including studies done by other groups, much of which also is cited throughout this outline. They also monitored work of the Streamlined Sales and Use Tax Governing Board ("Streamlined") and the New Jersey Division of Taxation's study on the taxation of the digital economy generally, which is being done in conjunction with Rutgers University. See the project page on the MTC website for additional information.

Among stakeholders, administrators, and experts, it appears there is widespread agreement on some issues. For example, there was almost unanimous agreement that the proposed white paper is a good idea. On other issues, as might be expected, viewpoints diverge. Nevertheless, there is no doubt as to the significance of particular issues and those issues have been incorporated into the detailed outline along with the related questions. Also, to aid in review of these issues and questions, this report provides a brief background section.

Related Actions of the MTC Uniformity Committee:

April 28, 2021 –

Representatives from the Washington Department of Revenue gave a presentation to the MTC Uniformity Committee in which they described their state's experience with imposing sales tax on digital products as well as the alternatives considered. They also proposed that the Committee take up a project to help states develop a simpler and more adaptable approach. The Committee asked the Standing Subcommittee to review the project proposal.

July 28, 2021 –

The Standing Subcommittee recommended that a work group be formed to draft a white paper. The Uniformity Committee asked MTC staff to first solicit input from stakeholders and prepare a detailed outline of the white paper, identifying issues to be addressed.

EXEMPTIONS & EXCLUSIONS

- From the White Paper Outline

“Exemptions – As noted above, states typically provide a number of exemptions. Many of these exemptions address B2B transactions to reduce tax pyramiding or address the inherent regressivity of the tax. Others may single out particular industries or activities for tax benefit. There is a wide variation in the types of exemption states offer and even similar exemptions may rely on slightly different defined terms or requirements.”

STAKEHOLDER ISSUES

- From the White Paper Outline (summarizing stakeholder interviews)

General mechanics of the sales and use taxes – especially **exemptions** and sourcing

(1) Sales tax versus use tax and whether difference in the nature of the taxes might justify additional rules (a) Multiple points of use (i) Description of the problem (ii) Adoption and repeal of rule by Streamlined (iii) Possible solutions

(2) Possible limit on the period after first use during which a subsequent use in a state may give rise to tax

(3) **Application of general B2B exemptions to digital products when the purchaser is a business** (a) Description of the problem (b) Possible solutions

STAKEHOLDER ISSUES

- From the White Paper Outline (summarizing stakeholder interviews)

General mechanics of the sales and use taxes – especially exemptions and sourcing (cont'd)

(4) Application of exemptions based on the nature of the item or use, e.g., fabrication, processing, etc. (a) Description of the problem (b) Possible solutions.

(5) Application of typical exemptions related to services, e.g., educational services, entertainment, etc. (a) Description of the problem (b) Possible solutions

REPORT OF STUDY GROUP - PROPOSED DEFINITION -

“Related Exemption: A product is exempt from taxation as an automated digital product if the product will be used **predominantly for a trade or business.**”

“Existing exemptions and exemption procedures should be reviewed to determine applicability. **If a state has other exemptions that are limited to tangible personal property or taxable services, the state should consider expanding the exemptions to explicitly cover automated digital products.**”

EXCLUSIONS AND EXEMPTIONS – PROPOSED OUTLINE

I. Sales Tax Base & Related Terms

A. The ultimate sales tax base is typically determined as follows:

1. Definitions – which form the starting point for imposition of the tax by:

- a. Generally defining items (e.g. tangible personal property),
- b. Specifically defining certain items (e.g. certain digital products).

2. **Broad exclusions** – which narrow the general application of the tax by making:

- a. Limitations on or exceptions to the defined items to which tax applies—typically included in the definitions themselves (e.g. when sold at retail or unless sold for some purpose)
- b. General exclusions based on easily verifiable criteria (e.g. items sold by government).

EXCLUSIONS AND EXEMPTIONS – PROPOSED OUTLINE

3. **Exemptions** – which carve out from the tax base certain specific transactions based on various criteria which often have to be verified in some way, including:
 - a. Definitions of specific items,
 - b. Who the seller is (e.g. hospitals),
 - c. Who the buyer is (e.g. government),
 - d. Purpose of the item (e.g. prescription drugs),
 - e. Use of the item by the buyer (e.g. resale, manufacturing, agriculture, etc.),
 - f. Other criteria (e.g. sales tax holidays).

EXCLUSIONS AND EXEMPTIONS – PROPOSED OUTLINE

B. **Exclusions versus exemptions** – The way in which certain transactions or items are removed from the tax base—whether through narrow definitions or exclusions or through exemptions varies by state. Some states may exclude things that are exempted by other states and vice versa.

EXCLUSIONS AND EXEMPTIONS – PROPOSED OUTLINE

C. Different approaches to determining the tax base – states have typically taken two different approaches to determining the sales tax base:

1. **Broad definition** with a number of **specific exemptions**: States generally tax tangible personal property broadly defined, with certain exclusions or exemptions, and
2. **Narrow definition** with **fewer specific exemptions**: States generally tax services and intangible or digital items by narrowly defining specific services or items, with certain exclusions or exemptions

EXCLUSIONS AND EXEMPTIONS – PROPOSED OUTLINE

II. Common Exclusions/Exemptions

Because states approach the determination of the tax base in different ways—the summary here includes common carve-outs whether they are exclusions or exemptions.

A. Typical general exclusions (not part of the “price” or “receipts”):

1. Certain additional charges and fees (e.g., shipping and delivery charges)
2. Cash discounts, coupons, trade-ins, rebates, etc.
3. Interest, consignment fees, collection fees and similar charges

EXCLUSIONS AND EXEMPTIONS – PROPOSED OUTLINE

B. Common exclusions based primarily on the definition of the item:

1. Real property and improvements
2. Clothing and related items
3. Food
4. Vehicles and related transportation property
5. Medical health-related items
6. Items subject to other excise taxes
7. Currency and related intangible items
8. Art and collectibles

EXCLUSIONS AND EXEMPTIONS – PROPOSED OUTLINE

C. Common exclusions/exemptions based primarily on the identity of the seller or buyer:

1. Occasional sellers
2. Related-party transactions
3. Government
4. Religious organizations
5. Educational, non-profit, or charitable organizations
6. Health or medical organizations or persons
7. Local quasi-governmental functions
8. Veterans or other persons

EXCLUSIONS AND EXEMPTIONS – PROPOSED OUTLINE

D. Common exemptions based primarily on use:

1. Purchases or leases for resale or release
2. Manufacturing or production inputs
3. Component parts of items to be resold

EXCLUSIONS AND EXEMPTIONS – PROPOSED OUTLINE

E. Common exemptions based on multiple criteria:

1. Business purchases of office supplies

2. Business purchases of energy

3. Manufacturers' purchases of equipment and production tools

4. Agricultural business purchases of equipment and production tools

5. Mining and natural resource industry equipment

6. Sales tax holidays for certain items



QUESTIONS – DISCUSSION?